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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92049726
Party	Defendant James G. Bonis, dba Pyramont, NA
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Submission	Other Motions/Papers
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Date	05/19/2010
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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**Alliant Techsystems, Inc.,**

Petitioner

vs.

**Cancellation No. 92049726**

**Registration No. 2744244**

**James G. Bonis d/b/a**

**Pyramont, N.A.,**

Respondent

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**RESPONSE TO ORDER TO SHOW CAUSE**

Respondent, James G. Bonis d/b/a Pyramont, N.A., hereby responds to the Order to Show Cause, stating:

1. Respondent's failure to file a Section 8 affidavit was the result of inadvertence or mistake. Respondent has not abandoned the mark, has no intention or desire to abandon the mark, and has no intention or desire to cease fighting against the cancellation thereof—short of the negotiation of a settlement with petitioner, which has been vigorously attempted. In further support of the foregoing, Respondent notes that:
  - (a) Respondent has answered and defended this action and engaged in vigorous settlement negotiations by and with petitioner via undersigned counsel. Proposals for settlement had been sent to counsel for petitioner and respondent was awaiting response from petitioner when notification of the failure to file a Section 8 affidavit was received.
  - (b) The Record will reflect that these settlement negotiations have been carried on and pursued by and with the consent and participation of both parties as evidenced by

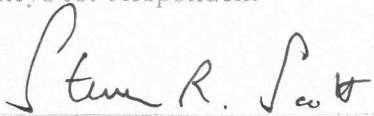
numerous stipulations for extension of time, most of which have been filed by petitioner on the basis of “settlement discussions”.

- (c) Respondent has instructed undersigned counsel to move forward with filing a new application for registration of Respondent’s trademark EXTREME SHOCK in the same class, which application will be filed in the immediate future.
  - (d) Respondent has not abandoned the mark and has no intention of abandoning the mark, which has been in continuous use and is in use to this day by, for and with the products described in the expired registration.
  - (e) Respondent has received notice that Petitioner has now filed an “Intent-to-Use” application for the mark, and has instructed undersigned counsel to move forward with filing an opposition to this attempt to register Respondent’s mark in due course.
  - (f) The principle and owner of Shlesinger & Fitzsimmons—Philip Fitzsimmons, Esquire--has suffered from severe health problems for an extended period, including serious heart attack and stroke, and is largely incapacitated, necessitating the employment of undersigned counsel on a case-by-case basis to work cases that must be actively pursued as opposed to matters of a more routine nature, which routine matters are still handled under the auspices of Mr. Fitzsimmons by office staff.
  - (g) Shlesinger & Fitzsimmons was charged with the duty of notifying Respondent of the need to file a Section 8 affidavit in this matter, but apparently due to inadvertence and/or mistake occasioned by Mr. Fitzsimmons’ medical condition, and/or clerical failures and/or missed communications/misunderstandings by staff at Shlesinger & Fitzsimmons and/or at Respondent’s end related to this matter, necessary actions were inadvertently and mistakenly not taken to file a Section 8 affidavit in this matter.
2. Respondent had the necessary factual and legal basis to file a Section 8 affidavit and Respondent’s failure to file a Section 8 affidavit was the result of inadvertence and/or mistake. Entry of a judgment with prejudice against Respondent in this matter will unjustly result in a decision against Respondent on a mark which it owns and which has been continuously in use since registration without a decision on the merits in this matter.

Wherefore, Respondent respectfully requests, in accordance with the provisions of TBMP Section 602.02(b) and *C. H. Guenther & Sons, Inc. v. Whitewing Ranch Co.* 8 USPQ2d 1450 (TTAB

1988), that judgment not be entered against it in this matter.

Respectfully Submitted:  
Shlesinger & Fitzsimmons  
Attorneys for Respondent

By: 

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Dated: May 19, 2010

#### DECLARATION

JAMES G. BONIS, dba, Pyramont, N.A., the undersigned, declares that the factual allegations set forth above are true and correct to the best of his knowledge and belief; that he believes himself to be the owner of the EXTREME SHOCK mark; that to the best of his knowledge and belief no other entity has the right to use said mark in commerce without his express license, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other entity, to cause confusion, or to cause mistake, or to deceive; and that all statements made herein of his own knowledge are true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Signed this 19th day of May, 2010.

JAMES G. BONIS, dba Pyramont, N.A.

By: 

James G. Bonis

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that a copy of the foregoing has been served on opposing counsel on this 19<sup>th</sup> day of May 2010, by first class mail addressed to Daniel J. Kelly, Esquire, Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402-4629.

A handwritten signature in cursive script, reading "Steven R. Scott", written in black ink. The signature is positioned above a horizontal line.

Steven R. Scott